1948

K

File No. O. Security Measures/48

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Security Measures

Opinions under the Bombay Security measures ordinance, 1946 which is substituted by the Bombay Public Security measures Act, 1947.

P=55

E

File No. O. Security Measures/48

Jdf. Sectt. Slip 24 B e.

4-A

C O N T E N T S.

Legal Department File No. O.Security Measures/48

Sr. No.	R.T. /O.No.	Subject.	Pages.
		Opinions under the B'bay Security Measures Act, 1947.	
1	48 / 3-1-48	Re: Restraint order served under cl.(e) of sec.2(1) of the Act on certain editor, Printer & Publisher. Question Whether the report published contravenes the restraint order.	1-2
2	1-Confl. / 6-1-48	Question whether the report published in "Hindustan" contravenes the restraint order served under cl.(e)of sec.2(1) of the Act.	3-4
3	65 / 5-1-48	Question whether the report published in "Inquilab-e-Jadid" contravenes the restraint order served under cl.(e) of sec.2(1) of the Act.	5-6
4	166 / 7-1-48	Question whether the report published in "Inquilab-e-Jadid" contravenes the restraint order served under cl.(e) orsec. 2(1)of the Act	7-8
5	282 / 9-1-48	Re: Contravention of restraint order served under cl.(e) of sec.2(1) of the Act	9-10
6	12-Confl. / 13-1-48	Question whether a person once detened under sec. 2(1)(a) and released can be again rearrested for the same offence.	11-12
7	323 / 10-1-48	Re: Contravention of restraint order served under cl. (e) of sec.2(1) of the Act.	13-16
8	496 / 15-1-48	Re:Contravention of restraint order served under cl.(e) of sec.2(1) of the Act.	17-18
9	582 / 17-1-48	Re: Do	19-20
10	714 / 20-1-48	Re:Contravention of restraint order issued under cl.(e) of sec.2(1)	21-22
11	1504 / 11-2-48	Re: Do	23-24
12	1498 / 11-2-48	Re: Do	25-26
13	1601 / 15-2-48	Question whether the order issued by the D.M. under cl.(a) of sec.2(1) directing certain person not to enter the Distt. of Kolaba for a period of two months is ultra-vires the provisions of cl.(a) of sec.2(1)	27-28
14	96-Confl. / 25-2-48	Re:Detention for having connection with R.S.S.	29-30
15	3185 / 2-4-48	Sec.2(1)(a) and 4 Re: D.M.'s power to release a detenee on parole	31-34
16	2821 / 22-3-48	Question regarding improving restrictions on the activities of a person who is in jail by order under cl.(e) of sec.2(1)	35-36

1	2	3	4
17	4471 3-5-48	Question regarding taking action against certain newspaper under sec.9A instead of under cl.(e)of sec.2(1)	37-38
18	4511 11-5-48	Question whether the Act permits releases on Parole question also 2)Whether the Act permits rearrest of persons released on parole	39-40
19	5591 16-6-48	Re:Extenmment on grounds that the person is a gambler.	41-42
20	6500 10-7-48	Re:order issued under cl.(a)of sec. 9A(c) prohibiting the entry into or sale or distribution or circulation within the Province of B(bay of certain newspapers.	43-44
21	7380 5-8-48	Re: Action to be taken against a newspaper under sub-cl.(iii) or sub-cl.(iv) of cl(a) of sec.9A(1) of the Act.	45-46
22	9704 18-10-48	Sec.4 Re: Release from detention after taking an undertaking.	47-48
23	9084 24-9-48	sec.2(b) Re: Distt. Magistrate's jurisdiction to order forfeiture.	49-54
24	11727 10-12-48	Re: clauses (a) to(b) of sub-sec.(1) of sec.2 of the Act. Interpretation of	55-56
25	675-Confl 13-12-48	Re: Necessary bonds to be taken for good behaviour from persons who have been conditionally released under the Act. Security of such bonds	57-60
26	622-Confl. 17-11-48	Re: Rearrest of a person who was released on parole	61-62
27	694-Confl 21-12-48	Question regarding combination of orders issued under the B.P.S.M.Act, 1947.	63-64
28	577-Confl. 28-10-48	Re: Powers of detention delegated to the D.M. (Pl.seeR.L.A.8s No.8585,dt.10-9-48) (C.Cr.P.C.)	65-66
29	12298 24-12-48	Question regarding detention in a jail of a person who is under trial for offences under sec. 4 & 5 of the Gambling Act.	67-68
30	699Confl. 21-12-48	Re: Grounds of detention under the B.P.S.M. Act, 1942.	69-70
31	719Confl. 28-12-48	Re:Contravention by the members of the Rashtra Seva Dal of the restraint order issued under sec. 7 of the Act.	71-72
32		Re: Note of the G.P.High Court B'bay stati g the points to be observed by the officers concerned while issuing orders of detention under the B'bay P.Security Measures, Act, 1947.	73-82

PSM. 2-6
5C.

(pp. 73-82 not copied)

46.

K.S.R.
46

Office of the R.L.A.

"Massacre of four hundred Hindus". Article in Bharat dated 11-12-1947. Contravention of Restraint order.

Bombay Public Security Measures Act, 1947.

Mr. Natwarlal H. Desai, Editor printer and publisher of "Bharat" has been served with a restraint order under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. "Bharat" in its issue dated 11th December 1947 has published a report under the headlines "Massacre of four Hindus", "Atrocity perpetrated by one hundred armed Mulsims". The question raised for the consideration of the R.L.A. is whether this report contravenes the restraint order.

2. The report contains a matter bearing directly or indirectly on the communal situation in Junagadh State inasmuch as it relates to the massacre of four hundred Hindus in villages in Junagadh State by armed Muslims arriving in eight motor vans. Consequently the report comes within the ambit of clause (a)(i) of the restraint order.

Id/- P.M.L.
2-1-48

Remembrancer of Legal Affairs.

U.R. to H.D.,(Political), No. 48 dated the 3rd January 1948.

PSM. 31-5
4C

Office of the R.L.A.

Report published in Hindustan dated 23-11-1947 Contravention of restraint order. Bombay Public Security Measures Act, 1947.

It appears that Mr. Ghulam Ahmed Khan, editor of the Urdu daily newspaper entitled "Hindustan" has been served with a restraint Order under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947,. The question raised for the consideration of the R.L.A. is whether the report published in the issue of "Hindustan" dated 23rd November 1947 under the headlines "The Turkish officers can give best training to the Pakistan armies- Advice to study the Quran carefully. An interview with the Afghan Ambassador of Turkey" contravenes the restraint Order.

The report states that His Excellency Sardar Faiz Muhammad Khan, the Afghanistan's Ambassador for Turkey during his interview with the reporter of the newspaper "the Daily Gazette" of Karachi expressed his disappointment about the relations between India and Pakistan and hoped that shortly amicable relations would be established between the two Governments. It is cle r from this that the report states that the present relations between India and Pakistan are disappointing. Consequently the report technically comes within the ambit of clause (a)(ii) of the restraint Order.

Id/- P.M.L.
6-1

Remembrancer of Legal Affairs.

U.R. to H.D.(Political), No. 1-Confl. dated the 6th January 1948 .

PSM. 31-5
4C

Office of the R.L.A.

Inqilab-e-Jadid' dated 28-11-47. Contravention of restraint Order. Bombay Public Security Measures Act, 1947.

It appears that Abdul Hamid Ansari, Editor of the Urdu Daily newspaper entitled "Inquilab-E-Jadid" Bombay, has been served with a restraint Order under clause (e) of section 2(1) of the Bombay Public Security Measures Act, 1947. The question raised for the consideration of the R.L.A. is whether the two reports, one headed "Conspiracy of the Tribesmen with Russia", "The raiders are armed with Russians rifles and other arms", "If Pakistan refers the Kashmir problem to the U.N.O., it will make a great mistake" and the other entitled "Different coins for India and Pakistan after 1st April", "No change in currency till 31st March", "Pakistan notes will not be accepted in India", "Disclosures by the Finance Minister of the India Government" published in the i issue of "INqilab-e-Jadid" dated 28th November 1947 contravene the restraint order.

It is stated in the first article that Pakistan would make a great mistake if it refers the Kashmir problem to the U.N.O., because although Pakistan espionage discovered that the Tribal eight hundred Pathans going to Poonch were found armed with Russian rifles and yet Pakistan did not at all try to stop them, nor did it chase them and no manner of attention was paid to the fact that those Pathans were armed with such rifles. It is clear that this report concerns relations between India and Pakistan since the Indian Dominion has pledge its Military aid to Kashmir to rid it of the invadors. Consequently, this article contravenes the restraint Order. The second article states that India and Pakistan will have different currency after 1st April 1948 and till then the notes and coins of India and Pakistan will be in circulation as usual. The article deals with the financial relations between

India and Pakistan and consequently it may be held to have technically contravened the restraint Order.

Id/- P.M.L.
3-1-48

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.), No. 65, dated the 5th January 1948.

PSM. 31-5
4C

Office of the R.L.A.

Mr. Abdul Hamid Ansari, editor of the urdu daily newspaper entitled "Inquilab-e-Jadid" has been served with a restraint order under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. The question raised for the consideration of the R.L.A. is whether the two reports at pages 17-25 ante contravene the restraint order.

2. The report at page 17 relates to the retirement of Mr. Suharwardy from politics and his decision to endeavour like Gandhiji for peace and friendship between the two dominions.

The second report at pages 19-25 ante amplifies the resolution passed by the Congress in Delhi relating to the administration of States. In this report the rulers of States in India have been warned that they could no longer get protection from any agency for maintaining their autocratic rule and they should rise to the occasion to establish democratic rule in their States, surrendering all powers to the representatives of the people. Neither of these two reports contravenes the restraint order, excepting only in the technical sense.

Id/- P.M.L.
6-1

Remembrancer of Legal Affairs.

U.H. to H.D.(Poll.), No. 166, dated the 7th January

Office of the R.L.A.

Gujarati Weekly, Newspaper, Article "Milat" appearing in Contravention of order made under clause (e) of section 2(1) of the Bombay Public Security Measures Act, 1947.

In his opinio No. 11509 dated the 2nd December 1947, the R.L.A. opined that the article in "Milat" dated 8th November 1947 containing an attack on Maulana Azad contained matter bearing directly or indirectly on a communal question in India, including news, and consequently contravened the restraint order made by Government under clause (e) of section 2(1) of the Bombay Public Security Measures Act. The Press Advisory Committe is, however, of the opinion that the contravention was only technical since the article related not to any Hindu-Mulsim communal question but to a question relating to two sections of Muslims and was therefore not a violation in spirit of the order. The R.L.A. is requested to see again and advise whether legally it is likely to be held that this is not communal in the sense that it does not concern relationship of two communities and that it is really political.

2. Having regard to (1) the special position which Maulana Azad occupies in the efforts which are being made to bring harmony between the two communities, (2) the object of the meeting he had convened which was to restore amity between the two communities and (3) the exhortation in the article not to follow his lead, it would not be unreasonable for any court to hold that what not the article dealt with was more than a mere domestic question solely concerning the Muslim community and that the article contained matter bearing directly, and at least indirectly, upon the relationship between the two communities and, therefore, not only of the letter but of the spirit of the restraint order. Whether the breach should be treated

be treated as of slight consequence and not deserving prosecution must naturally depend upon the harm the article is calculated to cause; and it is a matter of policy for the department to decide whether, having regard to the degree of harm, it would be sensible to seek redress in a criminal court. Compare the principle underlying section 95 of the I.P.C. which embodies the well known maxim de minimis non curat lex.

Id/- P.M.L.
8-1

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No. 282, dated the 9th January 1948.

PSM. 31-5
4C

The Common Security Measures Act, 1947.

Office of the R.L.A.

The presumptions made H.D. are generally correct. Special facts of each case may modify the presumptions. In particular, it has been ascertained from the Government Pleader that he recently got a judicial assurance in the group of petitions wherein District Magistrates' orders detaining persons in jails outside their districts were held invalid that the decision of the High Court and the consequent release of the detenus would not preclude his re-arrest under another order regularising the position.

Id/- P.M.L.
12-1

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.), No. 12-Confl., dated the 13th January 1948.

PSM. 31-5
4C

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the articles Nos. 3, 5, 6, 7, 8 and 9 at pp. 23 and 27 to 37 ante contravene the restraint order served on Mr. Abdul Rahman Nizamuddin Ansari, printer and publisher of the Urdu daily newspaper entitled "Inquilab-e-Jadid" under clause (e) of section 2(1) of the Bombay Public Security Measures Act, 1947.

2. By the restraint order, Mr. A bdul Rahman Nizamuddin Ansari is prohibited from printing and publishing in the said newspaper --

(a)any matter bearing directly or indirectly

(i) on the communal situation in any part of India or Pakistan or any Indian State, or any communal questio in India or Pakistan or any Indian State etc.; or

(ii) On questions concerning relations between India and Pakistan; or

(iii) On questions concerning relations between any Indian State and India or Pakistan or between Indian States including the description of any incident or event or any other news article, comment, picture or cartoon regarding such relationship;

or

(b) any matter which tends directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects.

Article No. 3 at p. 23 ante merely reproduces the official communique issued by the Government of India. It contains a statement that not a single soldier of the Indian Army entered Junagadh until it was requested by the Junagadh State Council and that the Army of the Government of India has nothing to do with the Azad/~~of the Government of India~~ Fouj. For the reasons given in the R.L.S.'s opinion No. 11614 dated 4-12-1947 - whic

-which apply it with equal force to the occupation of Junagadh - this may not be accepted by Courts as of a breach of the restraint order; and in any case, it is not a breach worthy of serious notice.

Article No. 5 at p. 27 contains the declaration of Nawab Moin Nawaz Jung Bahadur, Minister of Information of the Nizam Government, where he has expressed the hope that there would be an honourable settlement between Hyderabad and the Indian Union and that the news about the desire of Hyderabad to remain isolated was false, and they would establish such economic and political relations with the Government of India as would be beneficial both to Hyderabad and the Indian Union. Obviously this article contains nothing objectionable and the breach is purely technical in character.

Article No. 6 at p. 29 publishes the speech of Mr. Rizvi, who was re-elected President of the Ittehad-ul-Muslimeen of Hyderabad. It is stated that Mr. Qasim Rizvi delivered a speech on the occasion of his re-election saying that the Majilis will continue its efforts to save the throne and crown of Nizam from enemies. He appealed to the Muslims of the State to remain united. The expression "Enemies" means either the Indian Union or the Hindus. If it means Indian Union, the statement will directly or indirectly affect the relations between Hyderabad State and the Indian Union. If it means Hindus, it will have a tendency to embitter the feelings between Hindus and Muslims. In either case, this article appears to be more objectionable than preceding two articles and may be said to offend against the spirit of the restraint order, and, therefore, involves its breach.

Article No. 7 at p. 31 reproduces the speech of Mr. Ramchander Rao delivered at a public meeting in Madras. In this article, it is stated that 8 villages of the Nizam State situated in the District Krishna of the Madras Presidency have declared their independence and expressed the desire to join the Indian Union. It is further stated that the officers of the State in these villages have either gone to the their villages or have become friends of the villagers and in order to reach these villages, the State forces will have to pass through the territory of India. It is also stated that Ittehad-ul-Muslimeen in Hyderabad is supported by the whole Muslim community. This factual statement involves a breach which is primarily technical, and as in the case of article No. 3 above, not deserving of serious notice.

Article No. 8 at p. 33 reproduces the statement of Mr. Rao, Revenue Minister of Madras, where he has expressed a pious desire that the Nizam would join the Indian Union and establish responsible Government and that the problem of the relations between the Nizam and the Indian Union should not remain unsolved for a long time. The remarks made above in respect of article No. 5 apply alike to this article.

Article No. 9 at p. 35 ante has published a report under the heading "Heir apparent of Hyderabad Interned? The Indian troops would invade Hyderabad after Kashmir". It states that the Hyderabadis in London are anxiously feeling that the internal situation of Hyderabad has deteriorated and apprehend that the demand made by the Nizam for negotiating settlement to remain neutral for 12 months would result in the loss of the wealth and power of the Nizam and other Nawabas. After dealing with the divided opinion about the accession of Hyderabad to

the Indian Union it is stated that the danger is being felt among the Hyderabadis in London that this obstinacy on the part of the Nizam will prove fatal to the dynasty because the Indian Union will begin war as soon as Kashmir problem is solved. This forcasts about the invasion of Hyderabad by the Indian Union is very mischievious and is calculated to damage the good relations between the Indian Union and Hyderabad. On the whole, this article distinctly offends against the spirit of the order, by publishing matter which not only has a bearing directly but also adversely upon a question concerning the relations between Hyderabad and India. This article, therefore, involves a definite breach of the restraint order.

Id/- P.M.L.
10-1-48

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No. 323, dated the 10th January 1948.

'SM. 31-5
4C

Office of the R.L.A.

Article in "Hindustan" dated 26-11-1947. Contravention of restraint order under cl. (e) of sub-section (1) of section 2 of Bombay Public Security Measures Act, 1947.

It appears that Mr. Ghulam Ahmed Khan, the editor of the Urdu daily newspaper entitled "Hindustan" has been served with a restraint order under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. The question raised for the consideration of the R.L.A. is whether the article at page 35 published in the issue of "Hindustan" dated the 26-11-1947, contravene the restraint Order.

The following statement of Babu Purshottam Das Tandon is quoted in the article:-

> "What is the proof for this that the Muslims of India are loyal to the Government of India and that their position is not like the spies ~~xxx~~ of Pakistan. As long as the Muslims of ~~xx~~ India do not prove themselves to be loyal to the Government in a practical way, we should never repose any confidence or trust in them".

~~xxxxxxxxx~~ As a retort to that statement, it is stated in the article that "in our opinion, in order to convince Babu Purshottamdas Tandon, all the Muslamans of Hindustan must undergo Shuddhi(conversion ~~xx~~ to Hinduism) and adopt the Hindu religion". To suspect the loyalty of the Muslims and to call them spies of Pakistan would be matters relating to the communal question. Further a suggestion that the Musalmans should undergo Shuddhi and adopt the Hindu religion to prove their loyalty to the Indian Government is provocative. The article, therefore, appears to deal with the communal question and contravene the restraint Order.

Id/- P.M.L.
14-1

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll),No.496, dated the 15th January 1948.

Office of the R.L.A.

Article in Iqbal, dated 17-12-47 Contravention of Restraint Order, under clause (e) of sub-section(1) of section 2 of the Bombay Public Security Measures Act, 1947.

It appears that Mr. Syed Sadiq Ali Jaafri, editor, printer and publisher of the Urdu daily newspaper entitled 'Iqbal' has been served with a restraint order under Clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. The question raised for consideration of the R.L.A. is whether the report of the warning by Mr. Rizwi to the enemies of the State published in the issue of Iqbal dated 17-12-1947 contravenes the restraint order.

2. The report published in the issue of Iqbal dated 17-12-1947 runs thus:-

> "Hyderabad 13th December (Receiving later) Mr. Riswi, the President of Majlis-e-Ittehad-ul-Muslemeen, while delivering a speech in a holy meeting with a sword in one hand and the Quran in the other, warned the enemies of the State to stop their destructive activities, and that they should not prejudice the atmosphere of piece and tranquility existing in the State".

There is no indication in the reported as to who were meant to be the enemies of the State. The report does not deal with any communal question or the communal situation in Hyderabad; nor does it deal with any question concerning Hyderabad and India; for India cannot necessarily be intended by the term enemy. Consequently, the report does not appear to contravene the restraint order.

Id/- P.M.L.
16-1

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No. 582, dated the 17th January 1948.

PSM. 31-5
4C

Office of the R.L.A.

Article in 'Inquilab Jadid' dated 21-12-1947 Contravention of restraint order issued under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947.

It appears that Mr. Abdul Rahman Nizamudin Ansari, printer and publisher of the Urdu daily newspaper entitled 'Inquilab Jadid' has been served with a restraint order under clause (e) of sub-section(1) of section 2 of the Bombay Public Security Measures Act, 1947. In the issue of 'Inquilab Jadid' dated 21st December 1947, the restraint order passed by Government has been criticised as the funeral of the freedom of the press. The only objectionable passage in the article is; "Today it has become a practice that non-congress newspapers have absolutely no right to speak or to ventilate their grievances. Especially the Muslim newspapers alone fall a prey to this". The question raised for the consideration of the R.L.A. is whether the restraint order has been contravened.

2. Government has been charged with making discrimination between Muslim and non-Muslim newspapers and singling out the former for gagging. This allegation of discrimination is a matter bearing directly or indirectly on the communal question in India. Consequently, the editor has contravened the restraint order.

Id/- P.M.L.

20-1-48

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.)No. 714, dated the 20th January 1948.

Office of the R.L.A.

Article in Inquilab dt. 5-1-48 Contravention of Restraint Order under cl. (e) of sub-sec. (1) of section 2 of the B'bay Public Security Measures Act, 1947.

It appears that Mr. Husenkhan J. Babroo, editor , Printer and Publisher of 'Inquilab' at Ahmedabad has been served with a restraint order under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. The question raised for the consideration of the R.L.A. is whether the article published in the issue of 'Inquilab' dated the 5th January 1948 under the heading "Who will give a lead to the Muslims" contravenes the restraint order.

2. "Communal situation or communal question" in clause (a)(i) of the restraint order appear to have some reference to the relations between communities, say, for instance between Hindus, and Muslims. In the present article, no such reference can be found. All that the article emphasises is that the Muslim League must continue to function and that the Muslims themselves should decide their future without accepting the lead from persons like Maulana Azad, Shri Nuri, Brelvi or other persons. Consequently, the article would not contravene the restraint order, unless it be held that the very exhortation to Muslims to follow the League would itself be a question affecting the relations between Muslims and other communities that reasoning would, however, seem rather far-fetched. This case is distinguishable from that considered in R.L.A.'s opinion No. 11509 dated 2nd December 1947.

Id/- P.M.L.
11-2

Remembrancer of Legal Affairs.

U.R. to H.D.,No. 1504, dated 11th February 1948

Article in Gujarati Daily Newspaper entitled "Rozgar" dated 19-1-1948

Contravention of restraint order under cl. (e) of sub-sec. (1) of sec. 2 of the Bombay Public Security Measures Act, 1947.

Office of the R.L.A.

It appears that Mr. Moinuddin Abdullamia Koreishi, editor of the Gujarati daily newspaper entitled "Rozgar" at Ahmedabad has been served with a restraint order under clause (e) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. The question raised for the consideration of the R.L.A. is whether the article published in the issue of the "Rozgar" dated 19-1-1948 under the heading "Gandhi's fast" contravenes the restraint order.

2. It is clearly stated in the article that the relations between India and Pakistan have become tense at present and charges and counter-charges are being made at the U.N.O. Consequently the article contravenes clause (a)(iii) of the restraint order. It is also alleged in the article that those persons who have been preaching the slogan of Hindu-Muslim unity are showing the greatest communal hatred and inspite of the fact that both the Governments have been talking about communal unity no such unity has been established in both the dominions. Consequently the article appears to have an indirect reference to the communal situation in both the Dominions . The article would, therefore, also contravene, clause (a)(i) of the restraint order.

Id/- P.M.L.
11-2

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No. 1493, dated the 11th February 1948.

PSM. 31-5
4C

Office of the R.L.A.

The order issued by the District Magistrate, Kolaba, prohibiting Mrs. Godavari Parulekar of Kalyan from the entering the district would ordinarily have amounted to an externment ofder falling within the scope of clause (b) of section 2(1) of the Bombay Public Security Measures Act, 1947; but the wording of clause (b) contemplates the presence in the district of the person to be externed. Furthermore, an order against a person outside the jurisdiction of the District Magistrate would not be within the scope of the delegation conferred by Government under Home Department (Political) No. S.D. 671, dated 26-4-1947. Consequently the order issued by the District Magistrate, Kolaba, against Mrs. Godavari Parulekar would not be intra vires the provisions of clause (b) of sub-section(1) of section 2 of the Bombay Public Security Measures Act, 1947.

Id/- P.M.L.
13-2

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No. 1601, dated the 16th February 1948.

PSM. 31-5
4C

Detention for connection with R.S.S.

Bombay Public Security Measures Act, 1947.

The view taken by Secretary, H.D.is correct.

From the fact that the detenus were members of the R.S.S. when it was lawful it could not be presumed that they continued to be members after it was declared unlawful (see Dharmanadd Kosambi 33 B.L.R. 33). The R.S.S. was declared unlawful on 4-2-1948 and on the following day the detention orders were served on the members of the R.S.S. It is apparent that there was hardly any sufficient interval to afford evidence that these detenus continued to be members of the R.S.S. even after it was declared unlawful.

Id/- P.M.L.

20-2

Remembrancer of Legal Affairs.

U.R. to H.D.(Special),No. 96-Confl. dated the 20th February 1948.

PSM. 31-5
4C

R.I. No. 3756 dt. 30-3-48

Submitted.

2. It appears that the D.M.Poona passed an order on 17-2-1948 detaining Mr. B.T.Agarwal under sec. 2(1) (a) of the Bom. Public Security Measures Act, 1947. On application from Mr. J.V.Dandvate, the Advocate for the detenue, the D.M. cancelled the said order for detention under sec. 4 and released him on 21-2-48 subject to conditions that he does not take any part in the R.S.S. or any other political activities during the period of his parole and that he surrenders to the D.S.P. on the next day of his examination. Similarly a bond was also taken from him for the observance of the restrictions specified in the order. H.D. states that Mr. Agarwal must have surrendered himself to the D.S.P. for detention; but since the D.M. exceeded his powers in releasing him on parole he may be asked to release him immediately as his further detention will be challenged in Court. The R.L.A. is requested to advise about the legality of the D.M.'s order.

Power to release a detenu on parole Bombay Public Security Measures Act, 1947 sections 2(1)(a),

Office of the R.L.A.

The view taken by the Home Department is correct.

Id/- P.M.L.
1-4

Remembrancer of Legal Mm Affairs.

U.R. to H.D.,No. 3185, dated 2-4-48.

PSM. 31-5
4C

Office of the R.L.A.

So long as Godse is in jail, there would arise no question of imposing restrictions on his activities by any order under clause (e) of section 2(1) of the Bombay Public Security Measures Act, 1947. The order is intended to be against the person and not against the Press. Consequently, if any restraint order is to be served on him, it should be done on his release from prison. Similar would be the legal position in the linked case.

Id/- P.M.L.
20-3

Remembrancer of Legal Affairs.

U.R. to H.D.,No. 2821, dated the 22nd March 1948.

PSM. 31-5
4C

Office of the R.L.A.

Article in Dainik Trikal dated 14-1-48.

Clause (e) of sec. 2(1) of the Bombay Public Security Measures Act, 1947.

Sec. 9A

In view of the special provisions contained in section 9A of the Bombay Public Security Measures Act inserted by Act XXXVIII of 1948, it would be desirable to take action under that provision instead of under clause (e) of section 2(1):

Id/- P.M.L.
8-5.

Remembrancer of Legal Affairs.

U.R. to H.D.,(Poll,)No., 4471, dated the 8th May 1948.

PSM. 1-6
4C

R.I.No. 5972 dated 5-5-1948.

Submitted.

2/. Pl. see office note underlying R.L.A.'s opinion No. 3185, dated 2-4-1948. In accordance with this opinion the D.M.Poona was informed that the Bombay Public Security Measures Act, 1947 does not contemplate release on parole and that his action in releasing Mr. Agarwal on parole was therefore ultra vires. The D.M now states that Mr. Agarwal was released on parole after cancelling the detention order ~~was~~ 20-2-1948; that the was again detained after issue of a fresh detention order dated 28-2-1948 and that he was subsequently released on 29-3-1948 after taking necessary undertaking from him in the course of the review. He therefore premumes that release s on parole in this fashion are not ultra vires. H.D. states that the Act does not permit rearrest of persons on any ground unless there is a fresh prejudicial act and that releases on parole are not permissible under the Act. The R.L.A. is requested to advise.

3. The D.M. Poona states that after the cancellation of the detention order dated 20-2-1948 Mr. Agarwal was released on parole and he was again detained by a fresh detention order on 28-2-1948. Such fresh detention order could only be issued provided he had acted in a prejudicial manner soon after the cancellation of the first order. If this second order issued on the same ground on which the first order was passed it would be construed as improper in as much as the first order was cancelled by the Govt. only when it was satisfied that he was not acting in a prejudicial manner. If the second order was illegal the D.M. could not pass any order under section 4. In any case, his presumption that parole orders could be passed by him is not correct. The view taken by H.D. at p. 13 ante is correct. A

Sd/- P.S.Nadkarni.
8-5

A.L.R.

At A

Id/- R.T.K.
8-5

The last sentence to be the reply.

Id/- P.M.L.
10-5

Remembrancer of Legal Affairs.

U.R. to H.D.,No. 4511, dated 11-5-48 .

PSM. 1-6

Office of the R.L.A.

Externment on grounds that the person is a gambler.

Bombay Public Security Measures Act, 1947.

Although an externment Order passed under clause (b) or clause (c) of section 2(1) of the Bombay Public Security Measures Act, 1947, cannot be challenged by a habeas corpus application as in the case of a detention order, still such externment order can be challenged by the externee refusing to obey it or committing a breach thereof. The externment order passed in the present case is vulnerable as by committing the offence of gambling, however grave and serious, Mr. Kumbhar cannot be said to be acting in a manner prejudicial to the public safety, the maintenance of public order or the tranquility of Poona. The ratio decidendi of the decision of the High Court in Cri. Application No. 550 of 1947 may apply in the present case.

Id/- P.M.L.
15-6

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.)(I),No. 5591, dated 16th June 1948.

PSM. 1-6
4C

Office of the R.L.A.

Article published in Midweek special issue of Blitz dated 7-7-48

Clause (a) of sec. 9A(1) of the ~~Kukkix~~ Bombay Public Security M Measures Act, 1947.

Government order No. 3251/5, dated the 12th May 1948, issued under clause (a) of section 9A(1) of the Bombay Public Security Measures Act, 1947, only prohibits the entry into or sale or distribution or circulation within the Province of Bombay of certain newspapers one of which is "Dawn". By circulation we mean the transmission or passage of the newspaper from person to person its going round from hand to hand among a circle of readers, its dissemination by transmission of one copy among several readers or by diffusion of separate copies,. Circulation would not include the reproduction of a passage from the newspaper in question. Reproduction of articles from these banned newspapers is not prohibited. Consequently the republication of the article from "Dawn" would not be actionable in the present case, as it is otherwise not actionable.

Id/- P.M.L
10-7

Remembrancer of Legal Affairs.

U.R. to H.D.,(Poll.),No. 6500, dated the 10th July 1948.

PSM. 1-6
4C

Office of the R.L.A.

Bombay Public Security Measures Act, 1947.
Indian Press (Emergency Powers) Act 1931;
Articles Published in the People's Age.

The Articles at Slips A,B, C, D, E, F do not afford any justification for the satisfaction of Government that the paper is engaged in an activity prejudicial to the public safety etc. The article at Slip H contains a criticism of the Bombay Government in declining to afford reasonable facilities to the persons detained on account of political activities. Such criticism cannot be said to be prejudicial to the public safety or the maintenance of public tranquillity . The article at Slip'I' publishes the harassing tactics of the Bombay Police. This article too cannot form the basis of a prejudicial activity of that kind. Consequently, these two articles also afford no sufficient indication of the paper being engaged in an activity prejudicial to the public safety etc. Action under sub-clause (iii) or sub-clause (ii(iv). of clause (b) of section9(1) of the Bombay Public Security Measures Act would not, therefore, be strictly justifiable in law.

Id/- P.M.L.
4-8

Remembrancer of Legal Affairs.

U.O. to H.D.(Poll.),No. 7380, dated the 5th August 1948.

PSM. 1-6
4C

Release from detention after taking an undertaking Bombay Public Security Measures, Act, 1947. Section 4.

Office of the R.L.A.

The District Magistrate Bijapur, annulled the ~~xhm~~ order of detention under the provisions of section 4 of the Bombay Public Security Measures Act, 1947. The annulment will have to be treated as unconditional and absolute and is specifically permitted by that Section. The annulment may be consequent upon the undertaking but is not conditional in character. There is no method of enforcing the undertaking even if it be treated as part of the representation made by the detenu.

Id/- P.M.L.
16-10

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.),No. 9704, dated the 18th October 1948.

PSM. 1-6
4C

L.D.R.I.No. 9217
Dt. 23-7-48.

"Sub-section (6) of the said section 2 says that if any person contravenes any order made under the said section, he shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such person has entered into a bond in pursuance of the provisions of sub-section (2), his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the Court why such penalty should not be paid. Now, the District Magistrate in this case appears to have considered that sub-section (6) is divided into two sub-sections and provides for two distinct remedies. There he is wrong. The word "and" underlined above does not mean "or". The last word "Court" will show it. When a man is convicted, then the convicting Court may forfeit the bond in addition to the penalty and the District Magistrate's action in ~~xxx~~ this case was wholly illegal and improper and indeed, if there had been a revision application against that order, I would have immediately ~~x~~ reported the case ~~xxx~~ to ~~xxxxx~~ the High Court for quashing the order. The District Magistrate acted without jurisdiction. There is no revision application against the order of the District Magistrate and according to the High Court Circulars a revision application made after one month is not to be entertained unless good reason is shown. But I need not consider that point now as no such application is before me.".

Office of the R.L.A.

Public Security Measures Act, 1947.Sec. 2(6).

District Magistrate's jurisdiction to order forfeiture.

The view expressed by the Sessions Judge, Sholapur in paragraphs 4 and 5 of his judgment is correct. Under section 2(6) of the Bombay Public Security Measures Act, 1947 the power to order, on conviction, the forfeiture of the bond vests in the Court. Consequently the order of forfeiture passed by the District Magistrate Sholapur is ultra vires and invalid and he may be directed to refund the amount.

Id/- P.M.L.
23-9

Remembrancer of Legal Affairs

U.R. to H.D.,No. 9084, dated the 24th September 1948.

PSM. 1-6
4C

Office of the R.L.A.

Clauses (a) to (f) of sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947, are not in themselves mutually exclusive. They are not connected by the conjuction 'or' for the purpose of showing that only one of the alternative orders can be made. It may be that it would not be practicable to combine all such orders; but there will be no legal objection to such combination if it is otherwise practicable.

2. Sub-section (2)-A, no doubt, uses the words "any such order as is described, etc." but these words do not confine the power to the making of only one such order. The words "any such" can be reasonably construed to include more than one such order, especially as the original intention of sub-section (2) (1) does not preclude, as stated above, the combination of orders under several clauses.

Id/- P.M.L.
10-2
Remembrancer of Legal Affairs.

W.R. to H.D.(Spl.),No. 11727, dated the 10th December 1948.

PSM. 1-6
4C

It is not quite clear from the letter of the Commissioner of Police what he means by conditional release:

(i) whether release upon parole or other conditions of a person who is detained under an order under section 2(1)(a) of the Bombay Public Security Measures Act; or

(ii) The conditional release which is consequent upon the substitution of an order under clauses (b),(c) and (d) of that section ~~for~~ for that section for the order under clause (a). H.D. has presumably understood the conditional release in the latter sense.

2. In that case action is being taken under sub-section (2-A) of section 2 which says that "when any person is detained under an order made under clause ~~of~~ (a) of sub-section (1), the Provincial Government, notwithstanding anything contained in sub-section (1), in lieu of such order, may make any such order as is described in clause (b), (c) ~~and~~ or (d) of the said sub-section". Attention is specially invited to the words "any such order as is described in clause~~s~~ (b), (c) and (d)". These words show that the substituted order is still an order under clause (b), (c) or (d) as the case may be. What is intended is that the order under clause (a) should be superseded by an order under clause (b), (c) or (d),. The authority for such supersession and substitution is no doubt derivable from sub-section (2-A). In that view sub-section (2) would be attracted, and it would be feasible in making the order under clause (b), (c) or (d) to require the person in respect of whom it is made to enter into a bond with or without

(clause (b), (c) or (d), and not an independant order of a totally different kind under clause (2-A)

But the substituted order is nonetheless an order under X

without sureties for the due observance of the restrictions or conditions specified in the order.

3. It may, however, be pointed out that the bond of a general nature, as is suggested by the Commissioner of Police, stipulating not to commit a breach of the peace or to do any act that may probably occasion the breach of peace, etc. is not permissible under sub-section (2). The bond must be for the due observance of the restrictions or conditions contemplated by clauses (b), (c) or (d), and under those clauses a general condition of the kind described above cannot be imposed. Compare also R.L.A.'s opinion No. 636-Confidential, dated 24th November 1948. A revised form for the bond is herewith enclosed.

Id/- P.M.L.

11-12

Remembrancer of Legal Affairs.

U.R* to H.D.(Special), No. 675-Confl. , dated the 13th December 1948.

PSH. 1-6
4C

Office of the R.L.A.

The circular No. S.D.II-457, dated the 18th June 1948 and the notes of the discussion underlying it were not shown to the R.L.A. It will be seen from the notes of the discussion by H.M.(H.) with R.L.A. and Secy H.D. at p. 45 dated 9-6-1948 that it was not then decided that it was unnecessary to inform the detenue that the original order had been cancelled. The course then approved was suggested as the only practical way out of the difficulty . The R.L.A. was all along of the opinion that there was no provision in the Act for releasing the detenu on parole; that the annulment of the order will have to be treated as unconditional and absolute; and that there was no method of enforcing the undertaking given by the detenu (see R.L.A.'s opinions Nos. 3185, dated 2-4-48, and 9704, dated 18th October 1948). It has also been pointed out that the question of the legality of a fresh detention order is yet to receive consideration of Courts. See R.L.A.'s opinion No. 568-Confl., dated 23rd October 1948.

2. However, since a detenu is released on parole mostly to suit his own convenience, I do not think that he will be able to establish Mala fides if a fresh detention order is served upon him after the period of parole is over. So long as the grounds support the fresh detention order, and the order itself is to the effect that the person was acting and is likely to act in a manner prejudicial etc,, it would not ordinarily be upset by the High Court. I understand that the question of Mr. Sharma's release on parole a second time by the District Magistrate of Belgaum recently came to the notice of the High Court and the legality of the fresh detention may conceivably come up for consideration

in an application which I understand the High Court has directed Mr. Sharma to make on the basis of the latest order. We might usefully await the decision of the High Court in that case. In the meantime the procedure outlined in the circular may be followed but with this modification, namely, that the new order should be served upon the detenu so that, if necessary, he can ask for grounds and make a representation.

Id/- P.M.L.
16-11
Remembrancer of Legal Affairs.

U.R. to H.D.(Spl,), No. 622-Confl. dated the 17th November 1948.

PSM. 1-6
4C

Office of the R.L.A.

Re: Orders under Bombay Public Security Measures Act, 1947.

Please See R.L.A.'s opinion No. 11727, dated 10th December 1948. There should be no legal objection to combining an externment order and a restriction order in lieu of the original order of detention, provided it is made clear in the restriction order that it is intended to remain in force until the externment order simultaneously passed is actually executed. It may be useful to add that the restriction order was passed in consequence of granting the detenu's request for time to make arrangements incidental to his externment.

Id/- P.M.L.
20-12
Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.),No. 694-Corfl. dated 21st December 1948.

PSM. 1-6
4C

Office of the R.L.A.

The view taken by the District Magistrate is correct. The R.L.A. proceeded on his impression framed when the question of delegation was discusse that the powers to detain outside the district were to be given to District Magistrates in view of the releases ordered by the High Court. However this point does not arise since the District Magistrate, Kanara has cancelled the detention orders in the present case.

Sd/ - P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.),No. 577-Confl. dated the 28th October 1948.

PSM. 1-6
4C

There is no objection in law to granting th permission which will legalise the stay of the externee in the Province only for the purposes of and during his trial for the offences under sections 4 and 5 of the Gambling Act. However, as has been rightly pointed out in the papers, it may not be feasible to keep him as an undertrial prisoner during the trial, the offences being bailable . It is therefore a question of policy as to whether it is preferable to withdraw the case against him rather than allow him the proppect of free movement for the duration of his trial.

Id/- P.M.L.
24-12
Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.), No. 12298, dated the 24th December 1948.

PS 4. 1-6-48
4C

Office of the R.L.A.

Grounds of detention

Bombay Public Security Measures Act, 1947.

It is not quite certain whether the grounds will be construed as connected and cumulative. If they are treated disjunctively, the first two, viz. (1) being an externee from Bombay and (2) bad character, may be held to fall outside the scope of the Act, inasmuch as the bad character and the externment for that reason may have no relation to public order etc. The last ground though not very precise is likely to construed as affecting public order. I am inclined to feel that on the whole the grounds will not be acceptable as supporting the detention.

Id/- P.M.L.

21-2

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.),No. 699-Confl., dated the 21st December 1948.

PSM. 1-6
4C

Office of the R.L.A.

The Commissioner of Police, Bombay in his letter at pp. 9-11 ante states that although he had granted permission to the Rashtra Seva Dal to hold a meeting in the school to celebrate the death anniversary of Lokmanya Tilak, about 100 volunteers of the Dal formed themselves in files, held a flag salutation and drilled to the command of their commandant and played the attack and defence game. This would certainly be in breach of H.D.(Pol.) Order No. S.D.H.- 356/3581 (a), dated 5th April 1948 issued under section 7 of the Bombay Public Security Measures Act, 1947 although not on the ground that it was a "Really". The newspaper cuttings in the 'Lokmanya' dated 3rd August 1948 and the 'Dhanurdhari' dated 7th August 1948 do not however accept the allegations made by the Commissioner of Police.

Id/- P.H.L.

27-12

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.),No. 719-Confl; Dated the 28th December 1948 .

PSM. 1-6
4C